



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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Seattle, WA 98101-3140

OFFICE OF
REGIONAL COUNSEL

MAR 18 2011

REQUEST AND DEMAND LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
FEDERAL EXPRESS NEXT DAY DELIVERY

Clara Connor, Division Engineer
United States Department of Transportation
Federal Highway Administration
Western Federal Lands Highway Division
610 East Fifth Street
Vancouver, Washington 98661-3893

Re: Request for Performance of Cleanup Actions
Avery Landing Site, Shoshone County, Idaho

Dear Ms. Connor:

The Avery Landing Site located near the town of Avery in Shoshone County, Idaho ("Site") is contaminated by releases and discharges of oil and hazardous substances. This contamination has also been impacting the St Joe River immediately adjacent to the Site. Records in the possession of the United States Environmental Protection Agency ("EPA") indicate that the Federal Highway Administration ("FHA") has jurisdiction and control over property interests held by the United States at the Site. Our records also show that after the United States obtained this property through an eminent domain proceeding in 1986, FHA conducted relocation and construction work on a roadway currently referred to as "State Route 50."

EPA is preparing for cleanup of the Site beginning in the 2011 work season, and hereby requests the participation of FHA in the upcoming work. This request is based on responsibilities entrusted under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") and the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA").

In Executive Order 12580, January 23, 1987, the President delegated certain CERCLA authorities to departments of the United States, including the United States Department of Transportation ("DOT"). Among the delegated powers was cleanup responsibility for releases of hazardous substances on properties under the jurisdiction, custody or control of DOT. As the office within DOT which has jurisdiction and control over contaminated property at the Site, EPA construes FHA as having responsibility under CERCLA for the performance of removal actions to cleanup this contamination.

The participation of FHA in cleanup of the Site may also be obtained under CWA. EPA has authority under Section 311(c) of CWA, 33 U.S.C. § 1321(c), to direct and monitor Federal action to remove a discharge of oil and hazardous substances, and to mitigate or prevent a substantial threat of discharge of oil and hazardous substances. Further, according to Section 313(a) of CWA, 33 U.S.C. § 1323(a), each department, agency, or instrumentality of the Federal Government with jurisdiction over property of the United States may be obligated to undertake action to control and abate water pollution. Given these authorities, EPA construes FHA as having responsibility under CWA for the performance of cleanup actions at the Site.

Site Work

An assessment by the state of Idaho ("State") in 1991, and a follow-up inspection by EPA in 1993 confirmed that there were ongoing discharges of oil and possibly hazardous substances from the Site to the St. Joe River. Under oversight by the State, work was then undertaken by Potlatch Corporation in an attempt to prevent further discharges to the river. This work primarily consisted of the construction of free product recovery trenches and the operation of an oil water separator in 1995, and the construction of a vertical barrier containment system and a series of free product collection wells in 2000. Following each these efforts, however, there continued to be discharges of oil and possibly hazardous substances to the St. Joe River.

In 2007, EPA determined that an Engineering Evaluation and Cost Analysis ("EE/CA") was needed in order to more fully evaluate the threats presented by oil and hazardous substances at the Site, and to identify the actions which could be taken to abate such threats. EPA is now nearing completion of the EE/CA process, and in anticipation of having cleanup actions initiated at the Site during the 2011 work season, EPA is interested in obtaining a commitment from FHA to participate in the performance of these actions.

Request

EPA requests that FHA enter into an agreement which commits FHA to perform removal actions determined by EPA to be necessary for property of the United States at the Site which is under the jurisdiction and control of FHA. It may be that the anticipated work of FHA will either be undertaken in conjunction with or subsequent to other cleanup work to be conducted elsewhere at the Site. Included with this letter is a draft agreement setting forth proposed terms for performance of the work by FHA. The proposed agreement has been prepared based on the authorities of CWA, not CERCLA, in part due to EPA's understanding that FHA has not as yet received a delegation of CERCLA authorities from DOT.

EPA is interested in knowing within ten (10) days of today's date whether FHA is amenable to the approach toward cleanup of the Site outlined in this letter. FHA participation in the cleanup of a portion of property at the Site in a manner consistent with Federal authorities would be an extremely important contribution to the overall cleanup work at the Site.

Records

EPA has begun to establish an administrative record that contains documents which serve as the basis for selection of the cleanup actions for the Site. A copy of the current administrative record, including the EE/CA, is available for public review and comments at the Avery Community Center/Library located at 10 Depot Road in Avery, Idaho. Copies of the current administrative record are also available for public review and comments at the EPA, Region 10, offices located at 1910 Northwest Boulevard, Suite 208, in Coeur d'Alene, Idaho, and at 1200 Sixth Avenue in Seattle, Washington. To arrange an appointment in advance of reviewing the copy of the administrative record at the latter location, please contact the Superfund Records Center at (206) 553-4494.


Contacts

The Federal On-Scene Coordinator for the Site is Earl Liverman. EPA is also represented by Richard Mednick, Associate Regional Counsel, in this matter. Mr. Liverman may be reached at telephone number (208) 664-4858 and electronic mail address liverman.earl@epa.gov, and Mr. Mednick may be reached at telephone number (206) 553-1797 and electronic mail address mednick.richard@epa.gov. Please direct all contacts from FHA regarding the matter raised in this letter to either Mr. Liverman or Mr. Mednick with the caveat that have all contacts from counsel should be directed to Mr. Mednick.

Thank you for your prompt attention to this matter.

Sincerely,



 Chris D. Field, Unit Manager
Emergency Response Unit

Enclosure

cc: Mike Traffalis
Tim Binder
Earl Liverman
Richard Mednick